THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.2181 OF 1998

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to assessment order dated 25.3.1997 issued under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, "the Act), for the years 1984-85 to 1992-93, and to quash the same being arbitrary and illegal.

The petitioner-company is a dealer carrying on business in groundnut kernal and groundnut oil. It is stated that petitioner-company being a decorticator and miller, owning expeller, purchases groundnut from other registered dealers and agriculturists within the State and re-sells the same partly within the State and partly beyond the State, apart from using a part of it for manufacturing groundnut oil in its own mill. It is stated that petitioner-company has been paying market-fee at the Check Post on the sales of groundnut or kernal and that the respondent has been issuing receipts in the name of buyers to whom goods were sold by the petitioner. While so, the impugned assessment order dated 25.3.1997 was issued by the respondent raising a demand of Rs.6,99,747/- towards market-fee for the assessment years 1984-85 to 1992-93.

The petitioner alleges that before issuing the said assessment order, no show cause notice was issued to the petitioner, muchless any enquiry was conducted as contemplated under the provisions of the Act. It is alleged that the respondent-Market Committee, on verification of books of accounts of the petitioner, determined the turn over of the petitioner on its own without extending the benefit of exemption and the benefit of set-off of taxes paid by the buyers of the petitioner.

Hence, this writ petition contending, *inter alia* that the impugned assessment order, which was passed without issuing any show cause

notice to the petitioner and without conducting enquiry, is arbitrary and illegal. It is also contended that the impugned assessment order is barred by limitation under Section 12-B(4) of the Act since the assessment, if any, is required to be completed within a period of three years from the expiry of the year for which the assessment relates. It is further contended that since the petitioner has already paid taxes at the Check Post in respect of the sales effected in favour of other registered dealers situated within the State and outside the State, the petitioner cannot be made liable to pay the amount demanded under the impugned order. It is further contended that since the market-fee of Rs.4,11,794/- has already been collected at the Check Post in the name of buyers, once again the petitioner cannot be subject to payment of market-fee on the said turn over.

On behalf of the respondent/market-committee a counter-affidavit has been filed raising a preliminary objection contending that the writ petition itself is not maintainable, since against the order impugned an effective alternative remedy of Appeal is provided under Section 12-E of the Act. On merits, it is contended that the petitioner-company has been transacting with commodities notified as agricultural produce without obtaining licence as contemplated under Section 7 of the Act, and, therefore, the respondent/market-committee had earlier issued notices, and finally filed a Criminal Complaint under Section 23 of the Act in the Court of the Judicial First Class Magistrate, Sulurpet. Aggrieved by the said action, the writ petitioner along with other similarly situated dealers filed W.P.No.1799 of 1991 questioning the validity of constitution of market-committees and levying of market-fee. Though, initially, this Court granted interim stay, ultimately, the said writ petition was dismissed by a Division Bench of this Court by order dated 25.7.1996. Pursuant thereto when the enquiry was taken up under Section 23 of the Act the petitioner expressed its willingness for settling the matter outside the Court by producing Books of Accounts and paying market-fee. Accordingly, Books of Accounts relating to

purchase and sale of notified commodities for the years 1984 to 1992 were produced, and basing on the same, the assessing authority assessed the turn over of the petitioner-company for the years 1984-85 to 1991-92 and assessment orders were passed on different dates. The allegation of the petitioner-company that the assessing authority failed to give exemption/reduction of market-fee on cash receipts issued by the market-committees has been denied and it is stated that assessments do not suffer from any infirmity. It is also contended that the impugned assessment orders issued pursuant to the settlement between the parties during the proceedings under Section 23 of the Act before the Judicial First Class Magistrate, Sulurpet, cannot be held to be barred by limitation.

I have heard the learned counsel for both the parties.

The learned Senior counsel Sri K. Ashok Reddy, appearing for the writ petitioner contended that since, admittedly the impugned assessment order was issued without issuing prior notice and without conducting pre-assessment enquiry, on that ground alone, the impugned assessment order is liable be to set aside.

On the other hand, the learned counsel appearing for the respondent/market-committee contended that a prior notice is necessary only where the assessing authority is not satisfied with the particulars submitted by the trader or where it is found that the trader has suppressed or failed to furnish true particulars.

It is true that normally this Court will not entertain a writ petition under Article 226 of the Constitution of India, where an efficacious alternative remedy is provided under the statute itself. However, it is a well-settled principle that there is no absolute bar as such to grant the relief in exercise of the extraordinary jurisdiction of this Court and particularly, where the impugned order is without jurisdiction or in violation of the principles of natural justice notwithstanding alternative remedy available under the statute, it is always open to this Court to interfere.

In the case on hand, admittedly, no show cause notice was issued to the petitioner-company before making the impugned assessment order. However, the contention of the respondent/market-committee is that no such opportunity is necessary under the provisions of the Act and therefore the impugned order cannot be held to be in violation of the principles of natural justice.

It is to be noted that Section 12 of the Act empowers the market-committee to levy market-fee on any notified agricultural produce purchased or sold, in the notified market area. Under Section 12-A of the Act, every trader in the notified area, who is liable to pay market-fee under Section 12 of the Act, is required to submit returns relating to his turn over in the manner provided under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 as well as the bye-laws of the concerned market-committee. Under Section 12-B of the Act, if the assessing authority is satisfied that the returns submitted by the purchaser under Section 12-A of the Act are correct and complete, the amount of market-fee payable by the purchaser on the basis of such returns shall be assessed. However, if the return appears to be incorrect and incomplete, it shall, after giving the trader an opportunity of proving the correctness and completeness of the returns and after making such enquiry, assess to the best of its Judgment the amount of market-fee due from the trader. Sub-section (1) of Section 12-B further provides that assessment under Section 12-B shall be made only within a period of three years from the expiry of the year to which the assessment relates.

It is also relevant to note that that under sub-section (2) of Section 12-B, where the returns submitted by a trader includes the turnover which would not have been disclosed, but for an inspection of Accounts, Registers or other documents of the trader, the assessing authority has to give an opportunity to the trader for making a representation and proceed to take action treating such returns to be incorrect or incomplete within the meaning of sub-section (1) of

Section 12-B of the Act.

From the above, it is clear that not only for the purpose of assessment under sub-section (1) of Section 12-B of the Act, but also in the circumstances specified under sub-section (2) of Section 12-B of the Act, an opportunity to the trader to show cause is mandatory.

In the case on hand, the specific allegation is that the petitioner-company was transacting business without obtaining licence and on that ground penal proceedings under Section 23 of the Act were initiated. Pending such proceedings, petitioner-company produced books of accounts relating to purchase and sale of the notified commodities and on the basis of the same the impugned assessment was made.

Thus, it is clear that it is not a case where the assessment was made on being satisfied that the returns submitted by the petitioner were correct and complete. Apparently, the impugned assessment was made under sub-section (2) of Section 12-B of the Act which mandates an opportunity to the trader for making a representation. Moreover, the specific plea of the petitioner is that statutory exemptions, to which it is entitled, were not granted.

Hence, I find force in the submission of the learned counsel for the petitioner that the impugned assessment was made in violation of the principles of natural justice. Hence, it is not necessary to relegate the petitioner to the statutory remedy of Appeal.

Accordingly, without expressing any opinion as to the other contentions raised by the petitioner on merits, the impugned assessment is set aside and the writ petition is disposed of permitting the petitioner to submit its objections to the impugned assessment within a period of four weeks from the date of receipt of a copy of this order. Thereafter, it is open to the respondent/market-committee to pass appropriate orders afresh, following due process of law. No costs

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18.12.2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.2181 OF 1998

18th December, 2007.

Between:

P. Venkataraghavulu & Company,
Park Street, Sullurpet, Nellore District,

represented by its Partner –
Sri P.P.V. Raghavulu. .. Petitioner.
.. Petitioner.

And

Agricultural Market Committee,
Represented by its Secretary,
Sullurpet, Nellore District. ..
Respondent. .. Respondent.

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